

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 862 of 1997

with

CRIMINAL MISC. APPLICATION NO.2422 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO

2. To be referred to the Reporter or not? NO

3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? NO.

MOHAMMAD IQBAL IBRAHIM SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioners

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision:21/08/98

C.A.V.JUDGMENT :

1. The appellants who are the original accused Nos. 2,4,5 and 7 in Sessions Case No.2/97 have preferred this appeal under Section 374 of the Code of Criminal Procedure ("the Code" for short) challenging the legality and validity of the judgment and order dated 28-8-97,passed by the learned Sessions Judge, Bharuch, whereby the learned Addl. Sessions Judge has convicted the appellants under Section 395 of the IPC and imposed sentence 5 years' rigorous imprisonment and fine of Rs.500/- and in default, 1 year's rigorous imprisonment on each of the appellant.

Misc.Criminal Application No.2422 of 1998 is filed by the original complainant to return muddamal

currency notes, deposited by the petitioners on 7-2-97,
in the Court of Civil Judge (J.D.) & J.M.F.C., Bharuch.

2. The prosecution case in short is as under :

The complainant Jagdishbhai Kantibhai Patel at the relevant time was serving in the Ankleshwar branch of a courier firm namely Patel Vishnubhai Kantibhai and Company. At the branch office at Ankleshwar, 3 persons were working for delivering parcels which were sent by their head office and other offices.

3. On 14-8-96, the complainant went to Surat where the head office of the Courier Service is situated and stayed there over night. He collected posts and parcels and started for Ankleshwar in the early morning. The complainant was accompanied by other two employees of courier service namely Joitaram Bhaichand Patel and Vinod Rajput. The complainant and the other employee arrived at Ankleshwar at 6-30 hours. The complainant in the company of two other employees Joitaram Bhaichand Patel and Vinod Rajput had started in an auto rickshaw to deliver one parcel containing currency notes at village Palej. The auto rickshaw in which the complainant and other two employees were travelling, selected the root of national highway No.8 via Videocon Factory. When the said auto rickshaw was passing through the Videocon factory, one Ambassador Car bearing R.T.O.. registration No.GJ-06-T-8610 came from the rear side. The complainant saw that 4 persons were occupying the Ambassador Car. When the Ambassador Car over took the auto rickshaw, it stopped and 4 persons who were heavily drunk came out from the rickshaw and rushed towards the complainant and other two persons and said that they were police personnel and as the complainant and two other persons were carrying brown sugar, they shall have to hand over the parcel to them . When the complainant and other two persons told them that they are not carrying brown sugar but they are carrying parcels of courier company, the said four persons started beating them. The rickshaw driver was also beaten. The parcel which was containing currency notes was handed over to the four persons and they put it into the Ambassador Car and asked the complainant and other persons to follow them in the auto rickshaw. The persons occupying the Ambassador Car also told the complainant that they should follow the Ambassador Car which was going towards Police Station. When the auto rickshaw reached near village Rahadpor, the Ambassador Car overtook the rickshaw and went ahead in a full speed. Therefore, a suspicion arose in the mind of the complainant and the persons who were with him that

the persons who had taken the parcel were not police personnel. Therefore, the complainant and the other persons went to nearest Police Station i.e. Maktampur Bharuch Rural Police Station and lodged the complaint. The said complaint was recorded by PW 23 Babarbhai Kalabhai who was at the relevant time discharging his duties as Police Station Officer. PW 22 Kaushikbhai Dungarbhai Pandya who was at the relevant time discharging his duties as Police Sub Inspector at Bharuch Police Station, took over the investigation and interrogated the rickshaw driver and during the interrogation of the rickshaw driver, it was revealed that Accused No.2 Iqbal Raja, accused No.4 Jippo alias Sirajudin and accused No.5 Shabbir Memon were involved in the commission of the offence. In the meantime, Police Constable Parbatbhai and Police Constable Mahendrasinh seized the Ambassador Car No.GJ 16 C 8610 and arrested its driver Manhar Sahebsinh (accused No.1). During the interrogation of driver of the Ambassador Car, it was also revealed that in the above incident there was involvement of accused Nos. 2,4 and 5. The driver of the Ambassador Car came to be arrested at about 17-00 hours on 15-8-96. Accused Iqbal alias Raja came to be arrested by P.I., " B " Division Police Station, Bharuch and his arrest panchnama was prepared on 16-8-96 at 18-00 hours. On 16-8-96, accused No.1 Manharsinh shown his willingness to disclose the place where the currency notes were hidden, and therefore, 2 panchas were called and in their presence the accused No.1 and the other Police Officers went to the place where the accused No.1 has shown the currency notes, and therefore, a recovery panchnama to that effect was prepared. By the said panchnama, currency notes of Rs.10,000/- were recovered. Accused Iqbal Raja also shown his willingness to show the currency notes which he had concealed. Therefore, two independent panchas were called in the Police Station and a preliminary panchnama was drawn in the presence of two panchas and accused Iqbal Raja and the Police Officers. The accused namely Iqbal Raja had shown the currency notes which he had handed over to his brother Salim in the presence of panchas and police personnel. The brother of the accused Iqbal Raja had shown the place where he had concealed the currency notes. The said currency notes were taken out and the total amount of Rs.80,000/= was recovered by panchnama. The brother of accused Iqbal Raja namely Salim was also arrested in connection with the above crime. Accused Nos. 1 and 2 were produced before the Court and their remands were obtained for one day. A report to the Executive Magistrate was sent for holding identification parade of the accused No.2 Iqbal Raja. In the meantime, an

information was received that Sirajudin alias Jippo was hiding himself near Railway Colony, and therefore, police personnel raided at the place and the accused Sirajudin alias Jippo came to be arrested on 16-8-96 at 19-00 hours. The accused Shabbir Mohamad was arrested on the same day at 22-00 hours. On 16-8-96, Police Inspector, B Division Police Station arrested Majid Kallu at 22-30 hours. Accused Majid Kallu voluntarily shown his willingness to produce the muddamal-currency notes, and therefore, two panchas were called. A preliminary panchnama was drawn in the Police Station and in the presence of two panchas. The police personnel, the panchas and accused Sirajudin went near Batukna Akhada from where the accused Sirajudin after digging earth had taken out one plastic bag and from the said bag currency notes of Rs.5 lacs were recovered in the presence of panchas by drawing a panchnama. Similarly Majid Kallu also shown his willingness to show the muddamal currency notes, and therefore, in the presence of two independent panchas, the currency notes at the instruction of accused Majid Kallu came to be recovered. The said muddamal currency notes were of amount of Rs.4 lacs which were also recovered by drawing a panchnama in the presence of two independent panchas.

4. On 17-8-96, the Executive Magistrate, PW 21 Madhabhai Mithabhai Parmar held an identification parade wherein appellant No.1-original accused No.2 Mohmad Iqbal, appellant No.2-original accused No.4 Saiyad Sirajudin and appellant No.4-original accused No.7 were identified by the complainant.

5. On 19-8-96, accused No.2 Iqbal Raja further voluntarily showed his willingness to show the muddamal currency notes, and therefore, 2 independent panchas were called and in their presence preliminary panchnama was prepared in the Police Station. Thereafter, two panchas in the company of police personnel and accused Iqbal Raja had gone in a Government vehicle to the place as shown by Iqbal Raja and from that place currency notes in the sum of Rs.1 lac were recovered by drawing a panchnama. On 23-8-96, Police Inspector, B Division Police Station informed the Investigating Officer Shri Pandya that absconding accused Iqbal Ali Patel was arrested at 11-05 hours. Said accused Iqbal Ali was brought to the Police Station and was interrogated. During interrogation, the accused Iqbal Ali voluntarily shown his willingness to produce the muddamal currency notes. Therefore, two independent panchas were called and a preliminary panchnama was prepared. Thereafter, in a police vehicle, two panchas accompanied by police personnel and accused

Iqbal Ali had gone to Sherpura locality. Accused Iqbal Ali has dug out one plastic bag which was concealed in a pit and produced muddamal currency notes in the sum of Rs.1,60,000/- which were recovered by a panchnama. During the interrogation, accused Iqbal Ali told the Investigating Officer that other amount of Rs.40,000/= was handed over to Ali Soldier who had helped the accused Iqbal Ali in absconding. The auto rickshaw belonging to Ali Soldier was searched and from the said auto rickshaw currency notes of Rs.40,000/= were found which were recovered by drawing a panchnama. In the rickshaw two other persons were there whose names were Ali Langda and Bholu. Both the persons were also arrested at 17-00 hours on 23-8-96. Accused Iqbal Ali was taken on remand on 28-9-96, whereas other accused were sent to the judicial custody. PW 21 M.M.Parmar held identification parade of appellant No.4 Iqbal Ali (accused No.7) on 27-8-96 wherein the complainant identified the said accused Iqbal Ali. Thereafter, the Investigating Officer recorded the statements of other witnesses. On completion of the investigation, the Investigating Officer submitted charge sheet against 12 accused in the Court of learned Judicial Magistrate First Class at Bharuch for the offences punishable under Sections 395 and 120 B of the Indian Penal Code. As the offence under Section 395 of IPC was exclusively triable by the Court of Sessions, learned Judicial Magistrate First Class, Bharuch, under Section 209 of the Code committed the case to the Court of Sessions, Bharuch, for trial. The said case was numbered as Sessions Case No.2/97 and it came to be transferred in the Court of learned Additional Sessions Judge, Bharuch.

6. The charge Exh.17 was framed by the learned Addl.Sessions Judge, Bharuch, against the appellants and the other accused for the offences punishable under Sections 395 and 120 B of the IPC. All the accused pleaded not guilty and claimed to be tried. The prosecution in support of his case examined following witnesses :-

- PW1. Jagdishbhai Kanjibhai Patel-Exh.32 (complainant.)
- PW2 Joitaram Bhaichandbhai Patel, Exh.34
- PW3 Abdulrahim Ibrahim Shekh, Exh.35.
- PW4 Vinodbhai Babaji, Exh.38
- PW5 Dhamjibhai Mathurbhai Parmar, Exh.40.
- PW6 Ravindrabhai Chandubhai, Exh.43
- PW7 Parsottambhai Amratbhai, Exh.45.
- PW8 Jayantibhai Kanjibhai, Exh.46.
- PW9 Kantibhai Revabhai Patel, Exh.47.
- PW10 Yogeshkumar Kanaiyyalal Pandya, Exh.48.
- PW11 Mukeshbhai Gumabhai Rathod, Exh.51.

PW12 Vijaykumar Rajnikant, Exh.52.
PW13. Amarsinhbhai Dipsinhbhai Parmar, Exh.53.
PW14. Janaksinh Jaswantsinh Parmar, Exh.56.
PW15 Bipinbhai Bansilal Kayasth, Exh.57
PW16 Mahendra Narottamdas Patel, Exh.59.
PW17. Natvarbhai Becharbhai, Exh.61.
PW19. Mathurbhai Govindbhai Solanki, Exh.63.
PW20 Rajendrakumar Kantibhai Patel, Exh.65.
PW21 Madhabhai Mithabhai Parmar (Executive Magistrate)
Exh.66
PW22 Kaushikbhai Dinkarbhai Pandya, (Investigating
Officer) Exh.69 and
PW23 Head Constable Babarbhai Kabhai, Exh.75.

7. The prosecution produced documentary evidence in the nature of F.I.R., panchnama of test identification parade, discovery panchnames of muddamal-currency notes recovered at the instances of the accused persons, accounts books of courier company, arrest panchnama of the accused persons, panchnama of scene of the offence, map of scene of offence, notes prepared by Executive Magistrate at the time of test identification parade etc. After the prosecution evidence was over, all the accused persons were questioned generally and their statements came to be recorded by the learned Addl. Sessions Judge under Section 313 of the Code. The defence of all the accused persons is that they were falsely involved in the case and they were innocent persons and no muddamal currency notes were recovered from them.

8. The accused persons in defence examined defence witness No.1 Dhavalkumar Yogeshbhai Desai (Reporter, Navgujarat Times) at Exh.93 and defence witness No.2 Bakulbhai Jivabhai Patel (Reporter, Gujarat Samachar, Bharuch) at Exh.107. The photographs of the accused persons and the investigating officer were produced during the evidence of the defence witnesses which were not exhibited by the learned Addl. Sessions Judge.

9. The learned Addl. Sessions Judge after appreciating the evidence of the prosecution and the defence version and after hearing the learned advocates of the respective parties, recorded the following conclusions.

1. That the appellant Nos. 1 to 4, original accused No.2,3,5 and 7 were identified at the identification parade, and therefore, the prosecution has proved that they had committed dacoity on 15-8-96.

2. The evidence of PW 21 Executive Magistrate Mr. Parmar proves beyond doubt that the accused Nos. 2,3,5 and 7 were identified by the complainant who had seen them at the time of commission of dacoity which had taken place in bright day light. The evidence of PW 21 Mr. Parmar corroborates the evidence of the complainant PW 1 Jagdishbhai Kantibhai Patel.

3. The evidence of PW 22 ,Investigating Officer also corroborates the evidence of the Executive Magistrate PW 21. The evidence of Investigating Officer establishes that he had recovered Rs.13,90,000/= during the investigation from the accused persons. The evidence of rickshaw driver is corroborated by the evidence of complainant. The evidence of Joitaram and Vinodbhai also proves that the accused had come in Ambassador Car and committed the decoity.

4. The evidence of Executive Magistrate Mr. Parmar also proves that the accused Nos. 2,3,5 and 7 (present appellants) were identified by the complainant and other two persons who had accompanied him at the test identification parade as the persons who had committed dacoity.

10. On the basis of abovereferred to conclusions, the learned Addl.Sessions Judge convicted the appellant of the offence punishable under Section 395 of the IPC and punished the appellants-original accused Nos. 2,3, 5 and 7 and imposed sentence of 5 years rigorous imprisonment on each of them and a fine of Rs.500/- and in default, simple imprisonment of 1 month. However, learned Addl.Sessions Judge acquitted rest of the accused persons for which no appeal against acquittal is filed by the State of Gujarat.

11. Learned counsel for the appellants-original accused Nos. 2,3,5 and 7 has submitted that the conviction and sentence of the learned Addl.Sessions Judge is palpably wrong and illegal as he had convicted 4 persons for the offence of dacoity whereas as per the definition of dacoity, participation of minimum 5 persons is necessary for constituting an offence of dacoity.

12. It is further submitted by the learned counsel for the appellants that the accused Nos.2,3,5 and 7 were arrested on 15-8-96, whereas the identification parade was held on 17-8-96 and as it was not held as early as possible, and therefore,holding of identification parade is bad and cannot be taken into consideration for convicting the accused persons. It is further submitted

by the learned counsel for the appellants that before holding identification parade, necessary precautions were not taken by the Investigating Agency and the Executive Magistrate as the accused persons were taken from place to place and were shown to the witnesses at the Police Station. It is also stressed by the learned counsel for the appellants that the photographs of the accused persons were published in the daily newspaper Gujarat Samachar, Bharuch and Navgujarat Times on 17-8-96, i.e. before holding of identification parade, there were all the chances that the photographs must have been seen by the complainant and witnesses, and therefore, also no reliance can be placed on the identification parade. Learned counsel for the appellants has vehemently argued that except the complainant and the owner of Courier Company, all other independent witnesses have turned hostile, and therefore, learned Addl. Sessions Judge erred in convicting the accused persons of the offence punishable under Section 395 of the IPC. Learned counsel for the appellants also submitted that the evidence of Executive Magistrate is not trustworthy as he had not taken all the precautions in holding the test identification parade. It is also submitted by the learned counsel for the appellants that the learned Addl. Sessions Judge erred in not considering the fact that before holding T.I. Parade the photographs taken by the defence witnesses Dhavalkumar Desai and Bakulbhai Jivabhai Desai of the accused persons and the Investigating Officer were published on 17-8-96 in the daily newspaper. In this connection, it is further submitted that the learned Addl. Sessions Judge failed to appreciate that the photographs were already published in the daily newspaper on 17-8-96, and therefore, the photographs produced by the defence witnesses ought to have been exhibited and taken on the record of the case.

13. Learned counsel for the appellants also submitted that there was contradiction in the evidence of complainant with regard to the number of parcel which he was carrying. As per the complaint, he was carrying only one parcel of currency notes, whereas in the oral evidence, he deposed that he was carrying 2 parcels of currency notes. Learned counsel for the appellants submitted that the owner of the Courier Company namely PW 9 Kantibhai Revabhai Patel admitted in his oral evidence that the accused were shown to the witnesses at the Police Station before holding of the identification parade. It is further submitted by the learned counsel for the appellants that the numbers of the currency notes were not mentioned and the muddamal currency notes were

not identified by the witnesses during the trial, and therefore, it cannot be held that the accused persons had committed the dacoity of the parcel containing muddamal currency notes. It is further submitted that looking to the contradictory evidence of the complainant, the owner of the Courier Company and the Executive Magistrate, benefit of doubt should be given to the accused and the appeal should be allowed.

14. On the other hand, it is submitted by the learned Addl. Public Prosecutor that in the F.I.R., description of all the accused is given. It is further submitted by the learned A.P.P. that the accused persons were not shown to the complainant and to the witnesses, and therefore, the evidence of identification is reliable. It is further submitted that the evidence of Executive Magistrate Madhabhai Mithabhai Parmar is reliable. That he had taken all the precautions before holding identification parade. It is further submitted that dacoity of huge amount of currency notes was committed and the said currency notes were found from the appellants and the other accused who were their close associates also supports the prosecution version that the appellants had committed the dacoity for which they have been convicted and sentenced, and therefore, the appeal should be dismissed and conviction should be upheld.

15. In the complaint Exh.33, it is stated that the complainant PW 1 Jagdishbhai along with PW 2 Joitaram and PW 4 Vinodbhai were travelling in auto rickshaw towards Palej and were carrying one parcel containing currency notes. In oral testimony before the Court, PW 1 Jagdishbhai who is the complainant deposed that they were carrying two parcels containing currency notes. There is contradiction in the evidence of the complainant with regard to number of parcels he was carrying. It is also to be noted that the complainant and his companions were travelling in an auto rickshaw towards Palej and instead of travelling on the national highway, they selected a road which was not busy road. Normally a person carrying valuables would like to go on a busy road just like highway. The fact of unusual selection of less heavy traffic road by the complainant also creates doubt about the story put forward by him.

16. It is to be noted that Madhabhai Mithabhai Parmar had conducted the identification parade on 17-8-96 and 18-8-96. He has deposed that on 17-8-96, test identification parade was held and in the said identification parade, the accused Nos. 2,4,5 were identified. He has also deposed that on 27-8-96, second

identification parade was held, wherein the accused No.7 Iqbal Ali Mohamad was identified by PW 4 Vinodbhai. In the cross-examination, the witness deposed that he was not aware that on 17-8-96 the photographs of the accused persons were published in the newspaper. During the cross-examination of the PW 4, no material contradicting are brought out by the defence. Therefore, it is proved that during the identification parade, accused Nos. 2,4,5 and 7 were identified by the complainant and the witnesses. When Vinod Babaji and Joitaram Bhaichand who are the witnesses have stated that they had not seen the photographs of the accused persons before the identification parade was held and the accused persons were not shown them at the Police Station, the evidence of the identification parade is trustworthy. The submission of learned counsel for the appellants that as per the evidence of PW 9 Kantibhai Revabhai Patel, the accused persons were shown to the witnesses and the complainant, and therefore, the test of identification should be discarded is devoid of any merit. The witnesses who are examined before the Court categorically denied that the accused persons were shown to them before the identification parade was held. It is settled principle of law that the evidence of identification parade is piece of evidence. The purpose of test identification parade is that the accused persons were not known to the witnesses and some persons have committed the offence who are arrested by the police. The witnesses identifies them at the test identification parade. When the said persons were again identified in the Court during the evidence of the witnesses, it makes the prosecution case more that the same accused persons have committed the offence. The evidence of identification parade, in my view is reliable and trustworthy, and therefore, the prosecution has established beyond doubt that the appellants who were the accused Nos. 2,4,5 and 7 have committed the offence.

17. The submission of the learned counsel for the appellants that the prosecution has not identified the muddamal currency notes during the trial, and therefore, it is not proved that the said muddamal currency notes were the same i.e. of the decoityy committed by the appellant. In my opinion, the arguments of the learned counsel for the appellant deserves to be rejected. It is true that the panch witnesses to the recovery panchnama have turned hostile, but the evidence of the Investigating Officer proves that the muddamal currency notes were recovered from the accused Nos. 2,4,5 and 7 and the said discovery was admissible in evidence as per

the provisions of Section 27 of the Indian Evidence Act. The panch witnesses have admitted their signatures below the recovery panchnamas. The circumstances of the case leads to only one conclusion that the recovery of the muddamal currency notes at the instance of the accused persons corroborates the case of the prosecution that the appellants had committed the offence in question.

18. The submission of the learned counsel for the appellants that the number of currency notes were not noted in the panchnama is devoid of merits. Currency notes in a huge amount were recovered from the appellants and the currency notes were in the form of bundles, and therefore, it would not have been possible for the Investigating Officer to note down the numbers of currency notes in the panchnama and merely because numbers of currency notes were not mentioned in the panchnama, it cannot be held that the said currency notes were not recovered from the appellants. The evidence of P.S.I. Pandya, Investigating Officer shows that at the instance of the appellants, currency notes came to be recovered which strengthens the case of the prosecution that the appellants have committed the offence in question.

19. The learned Addl. Sessions Judge has convicted the appellants under Section 395 of the Indian Penal Code which is punishing Section for offence of decoity. Section 391 defines decoity as under :

391. Decoity- When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of person conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit " decoity ".

20. The above definition of the offence of decoity shows that there should be 5 or more persons in commission of offence robbery. The complainant since inception of lodging of the complaint has stated that 4 persons had taken away the parcels containing currency notes from him. Therefore, the offence committed by the appellants would not fall within the definition of decoity. The question arise that the appellants can be convicted for the offence ? Section 390 of IPC defines

robbery which reads as under :

390. Robbery- In all robbery there is either theft or extortion.

When theft is robbery- Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.- Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

21. In this case, there is cogent and convincing evidence that the complainant and his two accompanions were put under fear and the appellants had caused hurt to them while taking away the parcels of currency notes. Therefore, the offence which the appellants have committed would be robbery as defined under Section 390 of the IPC. Therefore, the conviction recorded by the learned Addl. Sessions Judge for the offence under Section 395 of IPC requires to be quashed and set aside and instead that appellants are held guilty for the offence of committing robbery under Section 392 of the IPC. The appellants were charged for the offence punishable under Section 395 read with Section 120 B IPC. The offence of criminal conspiracy i.e. under Section 120 B IPC was not proved during the trial. Therefore, it cannot be said that the appellants had conspired or planned to commit the offence of robbery. The facts and circumstances emerging from the record of the case shows that it was not a plan robbery, but the robbery was committed on the spur of the moment because the temptation could not be resisted. Looking to the facts and circumstances of the case, looking to the age of appellants and looking to the fact that they were not habitual offenders, in my opinion, it would be in the interest of justice if each of the appellant is ordered to undergo R.I. of 3 years and a fine of Rs.1,000/- each and in default R.I. for 3 months.

22. As a result of the foregoing discussion, the appeal is partly allowed. The judgment and order of the learned Addl. Sessions Judge, convicting the appellants under Section 395 of the IPC and sentencing them to undergo R.I. for 5 years and a fine of Rs.500/-, in default S.I. for one month, is hereby quashed and set aside. Instead that the appellants are convicted for the offence punishable under Section 392 of IPC and each of the appellant is ordered to undergo R.I. of 3 years and a fine of Rs.1,000/- each and in default, R.I. for 3 months.

Misc.Criminal Application No.2422 of 1998

The learned Chief Judicial Magistrate, Bharuch, is directed to hold an inquiry with regard to disposal of muddamal-currency notes and to pass necessary orders with regard to return of muddamal-currency notes, in accordance with law, within six weeks from today.

The office is directed to send writ of this order as well as R.&P. to the trial Court forthwith. Misc. Criminal Application No.2422 of 1998 is disposed of accordingly.

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